No. 87-2118

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ALEXANDER M. ROJAS, THERESA GUTIERREZ, RUBEN CARAVEO, TERRI PEREZ AND WENCESLAO GUTIERREZ, JR.,

Appellants,

v.

VICTORIA INDEPENDENT SCHOOL DISTRICT; VICTORIA INDEPENDENT SCHOOL DISTRICT BOARD OF TRUSTEES; JAY LACK, DALE PIGOTT, JAMES MURPHY, JOHN WILSON, STEVE BENNETT, JOE CONTI, JR., Trustees; LARRY R. VAUGHN, Superintendent, Victoria Independent School District; and VAL HUVAR, County Clerk, County of Victoria,

Appellees.

On Appeal From the United States District Court of the Southern District of Texas

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APPELLANTS' REPLY BRIEF

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Pursuant to Supreme Court Rule 16, Appellants file this Reply Brief responding to Appellees' Motion to Dismiss or Affirm.

STATEMENT OF THE CASE

Appellees represent that policy BE(LOCAL) is a housekeeping measure, passed because of several

very lengthy meetings involving items that had been on the agenda more than once and voted down. Appellees' reasons become less than neutral in the context of the facts preceeding adoption of policy BE(LOCAL).

The record below shows that during the year preceding the adoption of BE(LOCAL) the only items reflected in the Board minutes as repeatedly before the Board for action during open meetings were those of the $6.8 million bond issue and the school district's plan for remedying the racial imbalance of schools which included the closing of three of five minority neighborhood elementary schools. These items together were on the Board's agenda twelve times and the subject of several public hearings from October 1985 through May 1986. Policy BE(LOCAL) was initially proposed in April of 1986.

The two issues were linked in that the plan to remedy racial imbalance included construction of additions at several schools to accommodate students

from the closed elementary schools. The construction was to be funded by the $6.8 million received from issuance of bonds by the district.

The Mexican American community vocally and actively opposed the closing of minority neighborhood schools and the election to approve the issuance of bonds at board meetings and in public hearings. Theresa Gutierrez, the only Mexican American school board member, openly worked with the minority community in their opposition efforts.

Mrs. Gutierrez voted against approving the canvass of votes for the bond election because the district had failed to submit the election to the Department of Justice for preclearance.[1] On October 28, 1985, the day following the canvassing of election, the school district mailed a submission to the Department of Justice pursuant to advice of

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[1]The election for approval of bonds by voters was called by the Board on October 7, held October 26, and canvassed October 27, 1985.

the bond attorneys. The minority community and Theresa Gutierrez actively opposed preclearance of the bond election before the Department of Justice. The election was not precleared until March of 1986. Therefore, award of the contract to issue bonds could not be approved until April 22, 1986, some six months after the election.

On May 15, 1986, Mr. Gutierrez voted against the closing of William Offer Elementary, the school her children attended and the only minority neighborhood elementary school ultimately closed by the Board in its plan to remedy racial imbalances in schools.

On March 28, 1986, Mr. Gutierrez was the sole board vote against the motion not to respond to the options in a letter from the Department of Justice informing the district that it should either submit the numbered position feature for election of at-large trustees for preclearance review or not use that feature in future elections. The Board proceeded with April 1986 elections for at-large

trustees under the system incorporating the numbered position feature. The action taken by the board led to Section 5 of the Voting Rights Act litigation filed by the United States against the district. Mexican American voters attempted intervention and were granted amicus status in the lawsuit. The lawsuit resulted in an adverse decision for the district, rendered just six days before the adoption of policy BE(LOCAL), which required a special election for at-large trustees. See, United States v. Victoria Independent School District, No. V-86-17 (S.D. Tex. November 14, 1986).

On October 16, 1986, the date of first reading for policy BE(LOCAL), an article entitled "Board President Reflects on Animosity" was carried in the local newspaper. Board President Johnny Wilson stated that since the election 18 months before, the level of frustration among board members over

issues had mounted.[2]

In a newspaper account of the board meeting November 11, 1986, Board President Johnny Wilson stated that the Board often heard from the same individuals on repetitive topics. He further stated that he wished to hear from more of the public than the same three individuals who had addressed the Board earlier in the evening. Further in the article those persons were identified as Dwight Harris, representative of American Federation of Teachers, Wenceslao Gutierrez, Stroman school parent and husband of a trustee, and Alexander Rojas, representative of LULAC Council 626. Wilson finally commented that people who speak at citizen hearings are not representatives of the city, but persons who simply call and talk to trustees are. Of the six persons identified as addressing

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[2]The referenced election was the first held under the system incorporating single-member districts in which Theresa Gutierrez was elected.

the board on November 11, 1986, five were Mexican American, and one was black.

During the eighteen months of single-member district representation on the school board prior to the adoption of BE(LOCAL), the school district had become embroiled in issues of particular importance to the Mexican American community, and the Mexican American community had become vocal and active with the full support of Theresa Gutierrez.

SUMMARY OF ARGUMENT

In response to the eighteen months of minority activism in the school district, the Board enacted BE(LOCAL). Policy BE(LOCAL) was clearly directed to limiting the Mexican American community's ability through their representative to address concerns and bring issues of importance to them before Board open meetings. Although policy BE(LOCAL) would be effective only in circumstances outside of the actual election process, the

policy has the potential to severely impact the effectiveness of the votes cast by the Mexican American voters of the single-member district who put Theresa Gutierrez in office. See, Allen State Board of Elections, 393 U.S. 544, 565, 89 S.Ct. 817, 831-832, 22 L.Ed. 2d 1, 17(1969).

The district has argued that its policy BED(LOCAL) adequately provides for citizen input at Board meetings, ameliorating the effect of BE(LOCAL). However, Policy BED(LOCAL) restricts citizen input at meetings to items on the agenda only during a time block at the beginning of each meeting. A second block of time is provided for addressing issues of citizen interest after adjournment of the meeting. The policy provides for very limited Board responses to expressed interests. Appendix, p. 3a. There is no provision for the placement of an issue addressed by citizens on the agenda of a Board meeting. Clearly, BED(LOCAL) does nothing to ameliorate the effects of BE(LOCAL).

Allen interprets Section 5 to include in the right to vote "all action necessary to make a vote effective." Allen, supra, 393 U.S. at 565, 89 S.Ct. at 831-832, 22 L.Ed. 2d at 17. The purpose of potential for representation for Mexican American voters theoretically provided by the single-member district election system is voided when, after election, action by the Board causes their chosen representative to be unable or threatened with the inability to bring before board public meetings issues which are important to minority voters, but may be unimportant or threatening to other voters. In Victoria school district, the right to vote of Mexican Americans in the single-member district electing Theresa Gutierrez is in imminent danger of violation because BE(LOCAL) can render their votes cast for representation ineffective. Therefore, policy BE(LOCAL) is subject to §5 preclearance requirements.

CONCLUSION

Appellees' motion should be denied, probable

jurisdiction in this case should be noted and the cause set for oral argument.

Respectfully submitted,

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APPENDIX

BOARD MEETINGS:
PUBLIC PARTICIPATION

EXHAUSTION OF ADMINISTRATIVE REMEDIES	Complaints and concerns for which other resolution channels are provided shall be directed through those channels. (See DGBA, DNC, DO series, DQE, EFA, EHBA, FMA, FNG, FOA, FOD, and GF) If the Board President determines that a person has not attempted to resolve a matter administratively, the person shall be directed to the appropriate policy for attempted resolution before bringing the matter to the Board.
OPEN FORUM	At regular meetings the Board shall allow two blocks of time to hear persons who desire to make comments to the Board. The first of these time blocks shall be at the beginning of each meeting for the discussion of items which are on the agenda. Persons who wish to participate in this portion of the meeting shall sign up as they arrive, indicating the topic about which they wish to speak.

The second time block shall be after adjournment of the regular business meeting and shall be for issues of citizen interest not on the agenda.

During these time periods complaints against an employee shall not be heard unless the issue has been properly placed on the agenda and the individual employee being complained about has had the opportunity to determine whether the hearing is to be open or in executive session.

LIMIT ON PARTICIPATION

Public participation is limited to the designated open forum portion of a meeting. At all other times during Board meetings, the audience shall not enter into discussion or debate on matters being considered by the Board. Presentation shall be restricted to three minutes unless waived by a majority of the Board members. Delegations of more than five persons shall appoint one person to present their views before the Board and tha individual's time limit shall be extended to five minutes.

ISSUED DATE: 10/30/86
UPDATE 28
BED(L)-A

BOARD'S RESPONSE — Specific factual information or recitation of existing policy may be furnished in response to inquiries, but the Board and Administration may not deliberate, discuss, or make any decision on any subject not on the agenda.

ADOPTED: April 23, 1987

ISSUED DATE: 10/30/86
UPDATE 28
BED(L)-A